

STR'S AND CONDOMINIUMS

The Pehlke/Karon Amendment to WA 15

CONDOMINIUMS IN WA 15

Section 5.1.1.3 paragraph 2. Nothing in this By-law shall be construed to make the Town responsible for compliance with or enforcement of a lease, condominium by-laws or other governing documents.

Section 5.1.1.4 paragraph 1.c. **Moderator's Committee:** Where a Short-Term Rental Unit is part of a condominium association, a certification signed by the condominium association, that the condominium association **consents** to the use of the Operator's unit as a Short-Term Rental.

Section 5.1.1.4 paragraph 1.d. **Moderator's Committee:** Where a Short-Term Rental Unit is part of a condominium association, a certification signed by the applicant, that the operation of a Short-Term Rental **complies** with all condominium documents, by-laws, or other governing documents.

Section 5.1.1.4 paragraph 1.c. **AC Sub-Cmte.** Where a Short-Term Rental Unit is part of a condominium association, a certification signed by the condominium association that the proposed Short-Term Rental **complies** with all condominium documents, by-laws, or other governing documents.

PEHLKE/KARON AMENDMENT TO WA 15

- Section 5.1.1.4 paragraph 1.c. Where a Short-Term Rental Unit is part of a condominium association, certification signed by the condominium association, **that states that the Master Deed of the condominium association contains express permission allowing for Short-term rentals, as defined by the Zoning By-Law, and** consents to the use of the Operator's unit as a short-term rental.
- Section 5.1.1.4 paragraph 1.d. Where a Short-Term Rental Unit is part of a condominium association, certification signed by the applicant that the operation of the Short-Term Rental complies with all condominium documents, by-laws, or other governing documents, **including certifying that Short-term rentals, as defined by the Zoning By-Law are expressly permitted in the Master Deed of the condominium association.**

CONDOMINIUM GOVERNANCE

- **Declaration of Trust** – Establishes Association, Defines Board of Trustees
- **By-Laws** – Powers of Trustees, Responsibility of Trustees, Insurance, Meetings
- **Master Deed:** Floor Plans, Description of land, buildings, unit descriptions, # rooms, description of common areas, etc.
- MGL Chapter 183A Section 4 paragraph 1.
“No unit shall be devoted to a **use** prohibited in the Master Deed...”
MGL Chapter 183A Section 8 paragraph g.
“A Statement of the purposes for which the building and **each of the units** is intended and the restrictions, if any, as to their use.”
- The preceding three documents **require 75% supermajority of the beneficial interest of the condominium association to amend.** The 75% threshold is defined in Chapter 183a as necessary to amend.
- Rules and Regulations – Majority of Trustees can adopt rules governing common area, such as what residents can and cannot do in common area, such as personal property storage. Rules and regulations cannot restrict in-unit use.

EXAMPLE OF MASTER DEED AMENDMENT PROHIBITING STR'S

NOW, THEREFORE, said Master Deed is hereby amended in accordance with the provisions of said Section 9 by amending Section 8 of the Master Deed by adding the following new subparagraph (e) immediately following (d) thereof:

(e) Short term use of a Unit and/or any room or rooms in a Unit for any consideration, including non-monetary consideration, for living or sleeping purposes for a period of less than one (1) year is strictly prohibited without the prior written consent of the Trustees. Short term use of a Unit and/or any room(s) in a Unit, shall be defined as offering and/or using, renting, leasing, licensing, letting, swapping or exchanging of a Unit or room(s) of the Unit, for one or more persons for living or sleeping purposes, for any consideration, including non-monetary consideration, for a period of less than one (1) year. Prohibited uses shall include any use of a Unit, or room(s) in a Unit, as a bed and breakfast, regardless of whether or not the owner/operator resides in the Unit, and/or any use for transient, hotel, motel, lodging, vacation rental, nightly rental, tourist home, tourist house or other similar usage such as Airbnb and house swaps less than one (1) year. For purposes of this paragraph, a violation of this paragraph shall include not only the actual short term use of a Unit and/or any room or rooms in a Unit, but also advertising of

ARE STR'S A NEW USE?

- Current lawsuit against Town claims STR's are not a new use and that the Building Commissioner's interpretation of the Zoning By-Law is wrong.
- Town would not be amending our Zoning By-Law if STR's were not a new use.
- State passed Chapter 64G concerning room occupancy excise taxes to include short-term rentals (as accessed via “digital hosting platforms”) in 2018.
- Short-term rentals are defined by their **transient** occupancy.

CONDOMINIUM SELF-DETERMINATION: A CHICKEN VS. EGG PROBLEM

Town passes Zoning Change creating
New Use: Short-Term Rentals

Condo Docs
Prohibit STR's

Condo Docs
Silent on STR's

Pehlke/Karon Amendment: **prohibition is maintained** unless 75% of owners vote to allow STR's.

Current WA 15 Versions **Assumes STR's are allowed** unless Association amends Master Deed to prohibit: *after the fact, 75% of owners beneficial interest must agree. 26% could block majority.*

Pehlke/Karon Amendment **Assumes STR's are prohibited** until Master Deed is amended to allow STR's. Maintains Condo Self-Determination.

PEHLKE/KARON AMENDMENT

- Follows MGL 183A which states that Master Deed must contain the permitted uses and restrictions that units are subject too.
- Whenever a condo association wishes to change permitted uses or add restrictions, the Master Deed must be amended. Examples: Limiting the total number of rentals, prohibiting in-unit smoking.
- Some condominiums have taken steps to specifically prohibit STR's although there is debate among lawyers whether or not this is necessary if other restrictions, such as minimum lease length would also prohibit.